

(1984) 03 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No's. 1640 of 1979 and 957 of 1980

Kolhapur Zilla Sahakari Doodh Sangh Ltd.

APPELLANT

Vs

B.G. Mathankar, Judge 1st Co-operative Court Kolhapur and
Others

RESPONDENT

Date of Decision : 23-03-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1985) 1 BomCR 63

Hon'ble Judges : M.N. Chandurkar, C.J

Bench : Single Bench

Advocate : Y.R. Naik, in W.P. No. 1640/79 and Ashok P. Mundergji, in No. 4 in W.P. No. 957/80, for the Appellant; D.P. Hegde, Addl. Govt. Pl., for respondents Nos. 2, 3 and 5 in W.P. No. 1640/79, Ashok P. Mundergji, for resp. No. 4 in W.P. 1640/79 and M.A. Rane, for respondent Nos. 1 and 2, in W.P. No. 957/80, for the Respondent

Judgement

M.N. Chandurkar, C. J.

1. Both these petitions arise out of an order of termination of services of the petitioner in Writ Petition No. 957 of 1980 (hereinafter referred to as ""the employee"") who was in the employment of the Kolhapur Zilla Sahakari Doodh Sangh (hereinafter referred to as ""the employer"") as the Milk Distribution Officer. Admittedly the services of the employee were terminated by an order dated 14th July, 1977 and on 18th July, 1977 the employee filed a dispute before the Co-operative Court u/s 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as ""the Act"") for an adjudication of the said termination as invalid. In that proceeding the Co-operative Court granted an injunction on 26th July, 1977 restraining the employer from giving effect to the order of termination. After the revision application was filed before the Co-operative Tribunal the employer filed Special Civil Application No. 1599 of 1977 in this Court for a writ of quo waranto against the Judge who was functioning as the Co-operative Court on the ground that the Judge was not qualified to be

appointed as the Co-operative Court. Thereafter the employer filed Writ Petition No. 1640 of 1979 for quashing the proceedings before the Co-operative Court on the ground that a dispute with regard to the validity of termination of the services of the employee did not fall within section 91 of the Act. In this petition the order of injunction granted by the Co-operative Court as well as all further proceedings before the Co-operative Court were stayed.

2. In the meantime, the employee made a complaint before the Industrial Tribunal, Pune, u/s 33-A of the Industrial Disputes Act, 1947, on the ground that as a dispute was pending before the Industrial Tribunal, the termination of the services of the employee was effected without taking the approval of the Industrial Tribunal as required u/s 33(2)(b) of the Industrial Disputes Act, 1947. In that complaint the employee asked for being reinstated with full back wages on the ground that the termination order was in contravention of the provisions of section 33 of the Industrial Disputes Act. The employee had also filed a complaint alleging that the termination of his services was an unfair labour practice. In the proceedings before the Industrial Tribunal, the primary defence of the employer was that the complainant was not a workman as defined in section 2(s) of the Industrial Disputes Acts, 1947 as he was drawing a salary of more than Rs. 500/- and he was employed in a managerial and administrative capacity. The employer had also taken the stand that the provisions of section 33 of the Industrial Disputes Act were not applicable and that the complainant was discharged with one month's pay in lieu of notice. A further stand was taken that the employee having already resorted to the remedy u/s 91 of the Act, the Industrial Tribunal had no jurisdiction to entertain the dispute. The Industrial Tribunal held that the duties of the employee were of a supervisory nature and the writing ledger, etc. were incidental to his main duties and the employee was, therefore, employed in supervisory capacity and was not a workman within the meaning of section 2(s) of the Industrial Disputes Act. The Industrial Tribunal further held that the employee having already chosen the forum under the Act, he could not pursue the matter before the authority under the Industrial Disputes Act. The Tribunal, therefore, held that it was not open to the employee to pursue his remedy before the Industrial Tribunal. Consequently the complaint came to be dismissed. This order is challenged by the employee in Writ Petition No. 957 of 1980.

3. In Writ Petition No. 1640 of 1979 it is contended by Mr. Naik appearing on behalf of the employer co-operative society that a dispute between an employee of a co-operative society and the co-operative society with regard to termination of employment does not fall within section 91 of the Act because such a dispute is not a dispute touching the management or business of a society and reliance is placed on a decision of the Supreme Court in Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, . The Supreme Court in that decision was concerned with the question as to whether a dispute raised by an employee of a co-operative society for setting aside the removal from service on the ground that it was an act of victimization and for reinstatement in service

with back wages was a dispute which could be resolved by the Registrar of Co-operative Societies or whether it was a dispute touching the business of a society within the contemplation of section 96 of the Gujarat Co-operative Societies Act, 1962, or within the meaning of section 54 of the Bombay Co-operative Societies Act, 1925. Section 96 of the Gujarat Co-operative Societies Act is identical to the provisions of section 91 of the Maharashtra Co-operative Societies Act, 1960. The material part of section 91(1) of the Maharashtra Act reads as follows:

""Notwithstanding anything contained in any other law for the time being in force, any dispute touching the.....management or business of a Society shall be referred by any of the parties to the dispute.....to the Co-operative Court, if both the parties thereto are one or other of the following:---

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the Society or the Liquidator of the Society;

(b)

(c)

(d)

(e)""

The other parts of section 91 are not relevant for our purpose. Section 96 of the Gujarat Act reads as follows:

""(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business of a Society shall be referred in the prescribed form.....if the parties thereto are from amongst the following:---

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the Society or the Liquidator of the Society.....""

It is not necessary for the purpose of this case to refer to the provisions of section 54 of the Bombay Co-operative Societies Act, 1925 which has been reproduced in the Supreme Court judgment and the Supreme Court has compared the provisions of section 54 of the 1925 Act with the provisions of section 96 of the 1961 Act, but it is sufficient to mention that the Supreme Court has held that a dispute raised by an employee of a co-operative society for setting aside his removal from service on the ground that it was an act of victimization and for, reinstatement in service-with back wages is not ""any dispute"" which can be resolved by the Registrar of Co-operative Societies nor ""any dispute touching the business of a society"" within the contemplation of section 96 of the 1961 Act or section 54 of the 1925 Act and consequently the

dispute can be adjudicated upon the Labour Court alone. The Supreme Court in the same case has further made it clear that such a dispute is outside the scope of the expression ""touching the management of the society"" used in section 96(1) of the 1961 Act. In paragraph 37 of the judgment the Supreme Court observed as follows:-

"".....a dispute raised against the society by its discharged servant claiming reliefs such as reinstatement in service with back wages, which are not enforceable in a Civil Court is outside the scope of the expression ""touching the management of the society"" used in section 96(1) of the Act of the 1961, and the Registrar has no jurisdiction to deal with and determine it. Such a dispute squarely falls within the jurisdiction of the Labour Court under the B.I.R. Act.""

The Supreme Court in that decision has also quoted with approval the observations of that Court in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, , in which the Supreme Court relying on the decision in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, , had observed as follows:---

""The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself The word "business" is equated with actual trading or commercial or other similar business activity of the society and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society.....Thus it is clear that in respect of the dispute regarding the alteration of various conditions of service, the Registrar or other person dealing with it u/s 62 of the Act is not competent to grant the relief claimed by the workmen at all. On the principle laid down by this Court in the case of the Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, therefore, it must be held that this dispute is not a dispute covered by the provisions of section 61 of the Act. Such a dispute is not contemplated to be dealt with u/s 62 of the Act and must, therefore, be held to be outside the scope of section 61.""

Section 96 of the Gujarat Co-operative Societies Act is identical to section 91 of the Maharashtra Co-operative Societies Act and having regard to the earlier decision of the Supreme Court in the Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, and the later decision in Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, , it must be held that a dispute with regard to the termination of the services of the employee could not be made the subject-matter of a proceeding u/s 91 of the

Act before the Co-operative Court. Consequently all the proceedings before the Co-operative Court commenced on a dispute raised u/s 91 of the Act by the employee and the order of injunction dated 26th July 1977 are wholly without jurisdiction and are liable to be quashed.

4. Taking up Writ Petition No. 957 of 1980 it is argued by Mr. Mundergi on behalf of the employee that the employee cannot be thrown out from the Co-operative Court on the ground that he has a remedy under the Industrial law and at the same time he cannot be thrown out from the Industrial Tribunal on the ground that he has already approached the Co-operative Court.

5. Now, it has been held that the proceedings before the Co-operative Court u/s 91 of the Act are not maintainable and as held in Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, by the Supreme Court, the remedy of the petitioner would be under the Industrial law. But here the employee is faced with a serious difficulty. One of the grounds on which the Industrial Tribunal has declined to exercise jurisdiction is that the employee is not a workman within the meaning of the term as defined in section 2(s) of the Industrial Disputes Act. Now, at the material time the definition of a workman excluded a person who, being employed in a supervisory capacity, drew wages exceeding Rs. 500/- per mensem or who exercised either by virtue of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature. There is no dispute that the functions of the employee were not of a managerial nature. Mr. Mundergi has vehemently contended that the conclusion reached by the Labour Tribunal that the duties of the employees were of a supervisory nature is not correct because whatever he has done was done at the instance of the Managing Director. According to the learned Counsel, he had to go all over Kolhapur and find out how the milk booths were working and he had also to write ledgers. He did not dispute that in certain cases, he had issued warnings to the employees, but these again, according to the employee were issued on the directions of the Managing Director. He did not dispute the fact that the employee has in some cases recommended promotions. But all this, according to the learned Counsel, did not make the duties of a supervisory nature. Now, before the Industrial Tribunal the employee has been examined and he had admitted that he was required to check the entries made by the cashier, that it was his duty to visit the 38 morning milk centres and 18 evening milk centres and attend to the complaints of the customers, that he was also entitled to investigate into the complaints and submit his report to his superior officers. He has no doubt stated that he had no authority to appoint employees or to terminate the services of the employees or to sanction leave applications, but he admitted that he issued several circulars, which, according to him, he had issued under the directions of the Managing Director, and that he was in charge of the entire Milk Distribution Department. In cross-examination he admitted that a list of duties was given to him. The list of duties given to him described him as Milk Distribution Officer and his duties were ""Supervision of all work, correspondence, general ledger, reconciliation of accounts, etc."" He also

admitted that he had issued a circular (Ex. C-8) which gave the list of duties of the conductors of milk centres. He had also made endorsements on some applications made by some of the employees recommending the promotion of the worker as a supervisor. Such applications were Exs. C-12 to C-15. He admitted that he had issued certain letters to the employees (Exs C-9, C-10 and C-11). Now, it is argued by Mr. Mundergi that the employee had clearly stated in evidence that he had done all this as per directions of the Managing Director and no evidence has been tendered on behalf of the employer to deny this fact. Assuming for a moment that certain communications were issued by the employee as per the directions of the Managing Director. I fail to see how this fact negatives the nature of the duties of the employee. Admittedly when the employee recommended the applications of certain employee for being promoted as supervisor. It was obvious that the employee himself could not be an ordinary workman but was a superior officer. The fact that he has been described as a Milk Distribution Officer also indicates that he was something different from and was in a higher post than an ordinary workman. The fact that he was required to go about all the milk distribution centres in Kolhapur also shows that his duties were of a supervisory nature. On this evidence if the Industrial Tribunal has come to the conclusion that the employee was not a workman because his duties were of a supervisory nature and his salary being more than Rs. 500/-, in my view, this finding cannot be open to attack in these proceedings under Article 227 of the Constitution of India. The Industrial Tribunal was, therefore, right in holding that it was not competent to entertain any dispute with regard to the termination of the services of the employee. In the result, Writ Petition No. 957 of 1980 must fail.

6. The result, therefore, is that Writ Petition No. 1640 of 1979 is allowed and the proceedings before the Co-operative Court commenced on a dispute lodged by respondent No. 4 are quashed. Writ Petition No. 957 of 1980 is rejected. However, there will be no order as to costs in any of these petitions.